

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST:

JAMES R. MURRAY,
RESPONDENT

FINAL DECISION AND ORDER
LS0007251NUR

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 4th day of January, 2001.

Ann Brewer
A Member of the Board

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST:

JAMES R. MURRAY, R.N.
RESPONDENT

PROPOSED DECISION AND ORDER
LS0007251NUR

Christy L. Biersteker, R.N. James R. Murray

519 Sunnyslope #6

Hartland, WI 53029

Attorney John R. Zwieg James W. Harris

Division of Enforcement

P. O. Box 8935

Department of Regulation & Licensing

Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on November 9, 2000, before administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney James W. Harris. The respondent, James R. Murray, did not appear.

Based on the entire record of this case, the undersigned administrative law judge recommends that the Board of Nursing adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. James R. Murray ("respondent") (dob: 12/09/66) is and was at all times relevant a registered nurse licensed in the State of Wisconsin pursuant to license # 106659.
2. The respondent's license was first granted March 21, 1991, and expired on 2/29/00.
3. Upon application the respondent may renew license #106659 to practice.
4. On March 9, 1999 the respondent was convicted in the Waukesha County Circuit Court in case 98 CF 245 of the crime of obtaining controlled substances by fraud, Sec. 961.43 (1) (a), Stats.
5. The conduct leading to the conviction occurred while the respondent was on duty as a registered nurse at Waukesha Memorial hospital and involved the diversion of a quantity of injectable meperidine from patient supplies on or about January 2, 1998.
6. The respondent admitted that during the period of August, 1997, through January 4, 1998, he diverted the controlled substances meperidine, morphine and hydrocodone from his employer for his personal use.
7. The respondent was dismissed from the Impaired Professional's Procedure (IPP) program by the Board of Nursing on May 2, 2000, for non-compliance.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter, pursuant to Sec. 441.07, Stats.
2. The conduct described in the Findings of Fact constitutes unprofessional conduct in violation of Sec. 441.07(1) (b) and (d) Stats., and Wis. Adm. Code N 7.04 (1), (2) and (15).
3. By failing to file an Answer as required by Wis. Admin. Code RL 2.09, and by failing to appear at the hearing, the respondent is in default under Wis. Admin. Code RL 2.14, and the Board of Nursing may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the credential of the respondent, James R. Murray, license number 106659, is REVOKED, costs to Complainant.

OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an answer to the above-captioned complaint, nor did he appear at the scheduled hearing. As a result, the respondent is in default. The attorney for the complainant moved for default at the hearing, and the motion was granted.

The respondent obtained controlled substances by fraud in violation of Sec. 961.43 (1) (a), Stats. Professionals in the health care field such as the respondent are subject to strict rules relating to the dispensing and administering of medications, and the accurate reporting thereof. The improper obtaining of controlled substances is unprofessional conduct precisely because it interferes with the proper and lawful use of such substances necessary to insure the safety and health of patients. The respondent wrongly diverted controlled substances from his employer. The abuse of the respondent's position of trust as a nurse also violated state criminal law.

Revocation of the respondent's license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969).

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on respondent or that he even has an interest in being rehabilitated. The respondent has not come forward to show remorse, or an explanation for his conduct. The respondent was given the opportunity to participate in the Impaired Professional's Procedure program to begin the road toward rehabilitation. Despite this opportunity, he was subsequently terminated from the program for non-compliance, demonstrating his inability or unwillingness to participate in his own rehabilitation.

Absent some mitigating evidence (of which none has been presented), imposing anything less than revocation would not aid in deterrence. To not revoke respondent's license would instead wrongly signal others to engage in similar conduct without consequence. Revocation remains as the only way in which to safeguard the public. By revoking the respondent's license the public will be adequately protected from any further misconduct by him.

Dated: November 15, 2000

William Anderson Black

Administrative Law Judge

Department of Regulation and Licensing